

AF

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
DELMAR PAINTING COMPANY, INC.,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 742

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$500.00 civil penalty for an alleged paint-spill violation of RCW 90.48.080, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on February 3, 1975.

Appellant was represented by its president, James Cole. Respondent appeared through Joe McGoran, assistant attorney general. Sherri Darkow, Olympia court reporter, recorded the proceedings.

An informal conference (WAC 370-08-110) was held at the outset but

1 it did not produce a settlement.

2 Witnesses were sworn and testified. Exhibits were admitted.

3 From testimony heard, exhibits examined and exceptions received
4 from respondent and in part denied same, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I.

8 RCW 90.48.080 makes it unlawful to discharge pollutants into the
9 public waters of this state. RCW 90.48.144 authorizes a civil penalty
10 of not more than \$5,000.00 for each violation of the sections of RCW 90.48.

11 II.

12 Appellant, under contract with the State Department of Highways
13 (hereinafter "department"), did maintenance painting of the Hood Canal
14 Floating Bridge in late June and early July of 1974. Item 3 of the
15 contract specified that appellant must employ a protective covering to
16 prevent deleterious materials from entering water bodies when, in the
17 opinion of the department, such covering is necessary to prevent
18 "excessive" amounts of deleterious materials from entering water bodies.

19 III.

20 On July 1, 1974, and on at least two days prior to July 1, 1974, the
21 department's project engineer requested appellant to employ protective
22 "drop cloths" to prevent paint from entering Hood Canal. These requests
23 were ignored.

24 IV.

25 On July 1, 1974, an inspector on respondent's staff saw paint, being
26 sprayed on the bridge grid deck by appellant, falling into Hood Canal.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 The dripped paint made two slicks two feet wide and up to one-quarter
2 mile long on the surface of Hood Canal. About two gallons of paint fell
3 into the waters of Hood Canal, which is a public water body of this state.
4 No drop cloths were employed by appellant to catch paint drippings. It
5 is difficult, if not impossible, to spray paint a bridge grid deck (the
6 only method of painting same) without some paint falling into the water
7 body or land below, even with use of drop cloths.

8 V.

9 The paint used by appellant and which fell into the waters of
10 Hood Canal contained toxic materials and was a pollutant under the
11 definition in RCW 90.48.020.

12 VI.

13 As a result of the observed paint spill on July 1, 1974,
14 respondent on July 31, 1974 served on appellant Notice of Penalty
15 No. DE 74-649, citing RCW 90.48.080 and .144, for the amount of \$500.00.
16 On August 14, 1974, appellant applied to respondent for remission of
17 the penalty. On September 25, 1974, respondent affirmed the \$500.00
18 penalty. That affirmed penalty is the subject of this appeal.

19 VII.

20 In appellant's penalty remission application, appellant contends
21 the spilled paint was caused by a "careless employee" who ignored
22 appellant's advice to use "available canvas" for drop cloths
23 (Respondent's Exhibit No. 4).

24 VIII.

25 There is no record of any prior offense of a similar nature on the
26 part of the appellant.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

IX.

Any Conclusion of Law hereinafter stated which is deemed to be a Finding of Fact is adopted herewith as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

Appellant caused toxic paint--a pollutant--to fall into a public water body as cited in Notice of Penalty No. DE 74-649. Some paint always will fall to the surface below in spray painting of a bridge grid deck, the only method by which the grid can be painted. From a practical standpoint, then, the question here is whether the amount of spilled or dripped paint was excessive. It was. The amount could have been lessened by the use of drop cloths. Therefore, from both legal and practical aspects, appellant was in violation of RCW 90.48.080.

II.

The \$500.00 penalty assessed, being one-tenth the maximum allowable amount which could have been levied under RCW 90.48.144, is reasonable. While appellant offered no testimony, the record does contain its sworn statement that an employee disregarded appellant's request to use a drop cloth. We conclude that the appellant's prior record of offenses, none being shown, is excellent.

III.

Any Finding of Fact herein stated which is deemed to be a Conclusion of Law is adopted herewith as same.

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore the Pollution Control Hearings Board issues this
2 ORDER

3 The appeal is denied; appellant is directed to pay respondent
4 \$350.00, the balance of \$150.00 to be suspended on condition of no
5 similar violation for a period of nine months from the date this Order
6 becomes final.

7 DONE at Lacey, Washington, this 28th day of February, 1975.

8 POLLUTION CONTROL HEARINGS BOARD

9 Chris Smith
10 CHRIS SMITH, Chairman

11 Walt Woodward
12 WALT WOODWARD, Member
13
14
15
16
17
18
19
20
21
22
23
24
25

26 FINAL
27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

Mr. James Cole, President
Delmar Painting Company, Inc.
1201 N.W. 92nd Street
Seattle, Washington 98107

Mr. Joe McGoran
Assistant Attorney General
Department of Ecology
St. Martin's College
Olympia, Washington 98504

LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD